Supreme Court, U.S.
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No. 95-380

(3)

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1995

RONALD ANDOLSEK,

Petitioner

v.

CITY OF KIRTLAND, and
WES TRIMBLE, ADMINISTRATOR, BUREAU OF WORKERS' COMPENSATION, and
INDUSTRIAL COMMISSION OF OHIO,

Respondents.

Petition For Writ of Certiorari To The Court of Appeals,
Eleventh Appellate District
Lake County, Ohio

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Eleventh Appellate District Lake County, Ohio**

Respondents do not deny that the door to the Courthouse is closed for individuals with psychiatric problems caused by their work, such as Mr. Andolsek. The only suggestion on this point by Respondents is that there might be a remedy available through an Ohio tort referred to as an "Intentional Tort."

However, the tort known as "Intentional Tort" in Ohio law has no bearing on this case, or the deprivation of a remedy caused by the law barring psychiatric claims. Respondents, in their opposing brief, misstate the law of Ohio, and mislead this Court. In their opposing brief, the Respondents indicate (incorrectly) that there is an intentional tort remedy available to injured workers suffering solely from a psychiatric condition, and thus there is not a complete bar to a remedy.

The Ohio "Intentional Tort" remedy is not a Workers' Compensation remedy. As the Ohio Supreme Court has held, "intentional torts are completely unrelated to workers' compensation and the employment relationship." *State, ex rel. Ohio AFL-CIO v. Voinovich*, 69 Ohio St.3d 225, 229 (1994).

Therefore, there is no support in Ohio law for finding that the so-called "intentional tort" remedy would have any application to, or implication on, the complete denial of any workers' compensation remedy.

Additionally, the suggestion by respondents is misleading because there is no possibility of an intentional tort remedy being available to a worker such as Mr. Andolsek under Ohio law.

The intentional tort remedy is a very limited remedy. There would be no possibility of Mr. Andolsek establishing an intentional tort. An intentional tort

> is an act committed with the intent to injure another, or committed with the belief that such an injury is substantially certain to occur.
>
> *Jones v. VIP Development Co.*, 15 Ohio St.3d 90, syl. 1.[1]

The intentional tort does not apply to the situation where a worker suffers harm due to the natural course of his employment -- which is the situation in this case. The intentional tort remedy is available only to workers who are intentionally harmed by their employer. This is an extremely high threshold, and does not apply to workers such as Mr. Andolsek, who suffer psychiatric harm due to the conditions of their employment. An intentional tort only applies where there is knowledge by the employer that harm will occur. *Van Fossen v. Babcock & Wilcox Co.*, 36 Ohio St.3d 100, syl. 6 (1988).

Second, although the Respondents indicate that there is a dispute as to the work-relatedness of the psychiatric harm, this case was dismissed based on Respondents' "motion for judgment on the pleadings". Such a motion takes as admitted the allegations of the complaint. Thus, in the current posture of this case, there is no dispute that the psychiatric harm resulted from the work.

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[1] In Ohio, "the syllabus of a Supreme Court opinion states the controlling point or points of law decided." *Ohio Supreme Court Rules for the Reporting of Opinions*, Rule 1(B).

Respectfully submitted,

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